

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Charles J. Gundersen and  
Tracey A. Gundersen,

Plaintiffs,

v.

Civil No. 10-4524 (JNE/FLN)  
ORDER

Bank of America, N.A., and  
Bank of America Home Loan Servicing LP,  
f/k/a Countrywide Home Loans a/k/a  
BAC Home Loan Servicing, LP,

Defendants.

Charles and Tracey Gundersen brought this action for fraud against Bank of America, N.A., and Bank of America Home Loan Servicing LP in state court. After removing the action, Defendants<sup>1</sup> moved to dismiss the Complaint because the Gundersens failed to plead fraud with particularity. *See* Fed. R. Civ. P. 9(b); *Drobnak v. Andersen Corp.*, 561 F.3d 778, 783 (8th Cir. 2009); *BJC Health Sys. v. Columbia Cas. Co.*, 478 F.3d 908, 917 (8th Cir. 2007). Having reviewed the record, the Court concludes that the Gundersens failed to satisfy Rule 9(b) because they failed to plead the “who, what, where, when, and how” of the alleged fraud, and that a dismissal of the action without prejudice is appropriate. Therefore, IT IS ORDERED THAT:

1. Defendants’ Motion to Dismiss [Docket No. 2] is GRANTED.
2. This action is DISMISSED WITHOUT PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 15, 2011

s/ Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge

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<sup>1</sup> In the Notice of Removal, Defendants state that their correct names are Bank of America, N.A., and BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP.